

REMARKS

Claims 1-29 are pending in the application before entry of this amendment. By way of this amendment, Claims 1-2, 18-19 and 28-29 have been cancelled; Claims 3, 6-7, 9-11, 13-14, 16-17, 23-24 and 26-27 have been amended. Thus, claims 3-17 and 20-27 are pending and set forth the "claimed invention" as this term is to be understood herein. No new matter has been added. Reconsideration and a withdrawal of all rejections is respectfully solicited.

Information Disclose Statement

A copy of the missing patent document (WO 2004/045688) is included with this reply. Further, a Supplemental Information Disclose Statement is also filed concurrently with this response.

Drawings

Regarding the objection to as failing to comply with 37 CFR 1.84(p)(5) not describing a reference character in the description, please amend the specification, paragraph 61, as follows:

[0061] In a filling state, not shown, the piston 14 is positioned halfway between its positions in the dispensing state and the sealing state. In this position, the first end 20 of the passage 18 will still be open, but the vent 23 between the piston 14 flange portion 21 will be partially sealed (see GB0227128.6 and PCT/EP03/13074). The piston 14 has a circumferential array of longitudinal channels 25 formed in the portion of the outer surface of the piston 14 that will lie within the flange portion 21 in the filling state. These channels 25 allow air 26 to pass through the vent 23. Therefore, the first chamber 19a can be filled by drawing air 26 having powder 12 dispersed therein through the passage 18 extending through the capsule 10 from the first end 20 of the passage 18 to the second end 24 of the passage, when the capsule 10 is in its filling state.

Support for this amendment is found in the originally filed drawings wherein the passage of air is clearly shown in Figure 2.

Regarding the objection to as failing to comply with 37 CFR 1.83(a) not showing every feature of the claim, Applicant respectfully traverses such objection. The drawings in our application clearly show every feature of the capsule in its third state. This third state comprises the capsule already disclosed in existing Figures 1 - 5 arranged so that "the first chamber is open to the outside environment and there is a partial seal at the vent, the partial seal being gas pervious but powder product impervious". As clearly set out (see page 8, paragraph 2 of the description) said third state is a position between the capsule in the sealing state of Figure 1, and the discharging state of Figure 2. The third state is therefore clearly and unambiguously derivable from the specification as filed, and so there is no need to delete those claims to the third state, or to add further drawings.

Section 112 Rejections Overcome

Claims 3-28 have been rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses each and every aspect of this rejection.

Regarding the use of the term "generally", Applicant has revised the claims to remove this term.

In light of the examiner's comments regarding claim 12, claim 10 has been amended to provide antecedent basis for "a first chamber", "a flange portion" and "a second chamber". Claim 12 depends upon both claim 10 and claim 11. Similarly, claim 13 has been amended to provide antecedent basis for "an outside environment" and "a base" of the first chamber.

Regarding the objection to claims 3, 27 and 28, Applicant asserts claim 3 particularly points out and distinctly claims a capsule and a chain link for the capsule. Claim 27 particularly points out and distinctly claims a plurality of the capsules and the chain links according to claim 3. Claim 28 has been cancelled.

Section 102(b) Rejections Overcome

Claims 1, 3, 5-9, 11, 18-22 and 27-29 have been rejected under 35 U.S.C. 102(b) as anticipated over WIPO publication WO 01/30430 A1 to Braithwaite et al. ("Braithwaite "). Applicant respectfully traverses each and every aspect of this rejection. Braithwaite does not anticipate amended claim 3 as, in particular, it does not disclose a chain link for a capsule. Instead, Braithwaite teaches "a medicament dosage unit which comprises a sleeve and a medicament holding chamber adapted to form a slideable fit within the sleeve" (see page 2, lines 7-9). The sleeve thus forms an integral part of the medicament dosage unit and, according to the examiner's construction, the capsule thus formed. Braithwaite further discloses that the medicament dosage units may be releasably or permanently attached to one another so as to be in a chain-like conformation (see page 4, lines 10-12). Thus Braithwaite does not disclose a chain link or any like feature for forming a chain-like conformation.

Nor does Braithwaite disclose a capsule which comprises an opening at an end thereof of a size corresponding with a protrusion on the end of the chain link. Even in the unlikely event that the sleeves of Braithwaite are taken to comprise chain links, they do not have a protrusion which corresponds with an opening at the end of the capsules (the medicament dosage units). Furthermore, it is not obvious to modify Braithwaite to arrive at the claimed invention. Braithwaite directs the skilled person away from the claimed invention by exclusively teaching that the chain-like arrangement is achieved through the direct attachment of medicament dosage units to one another (see figure 12a). Such an arrangement teaches that a chain-like conformation is achieved by directly joining medicament dosage units to one another and, implicitly, that further linking features, in particular chain links, are not necessary. Hence the claimed invention is inventive over Braithwaite, even in the case foreshadowed by claim 21 where the chain link is integral with the capsule.

By virtue of their dependency on claim 3, claims 4-17 and claims 20-27, are also patentable for the reasons set out above.

Claims 1,3, 5-8, 10-11, 18-23, 27 and 29 have been rejected under 35 U.S.C. 102(b) as anticipated over US Patent Number 4,095,587 to Ishikawa ("Ishikawa"). Applicant respectfully traverses each and every aspect of this rejection. Ishikawa does not anticipate claim 3 because Ishikawa does not disclose a capsule which comprises an opening at an end thereof of a size corresponding with a protrusion on the end of a chain link and that the protrusion is a tubular portion having a hole therethrough. Ishikawa discloses that cap 5 must be screwed into cylindrical case 2 to form a capsule. Ishikawa does not disclose a capsule which comprises an opening at an end thereof, but instead provides a sleeve with an opening at an end thereof, for forming a capsule upon receipt of cap 5 in said opening. See in particular Ishikawa figure 5, item 2 and the description, column 2, lines 35-37 "...the capsule is comprised of a cylindrical case 2 with a link 4' and a cap 5 with a link 4" (column 2, line 35-37). For similar reasons, Ishikawa does not disclose a chain link for the capsule "...wherein the capsule comprises an opening at the end thereof of a size corresponding with a protrusion on the end of the chain link and that the protrusion is a tubular portion having a hole therethrough". That feature which the examiner contends is the protrusion, cap 5, is an essential part of the capsule of Ishikawa and cannot be interpreted as a feature separate to the capsule. In short, Ishikawa discloses either;

- 1) a capsule without an opening at an end thereof, and without a protrusion on the end of a chain link, or
- 2) a sleeve (not a capsule) with an opening at an end thereof corresponding with a protrusion on the end of a chain link.

Neither embodiment corresponds to the claimed invention, even in the case foreshadowed in claim 21 where the chain link is integral with the capsule. Thus, claim 3 is novel over Ishikawa.

Furthermore, because Ishikawa provides a series of chain linked capsules using a conventional chain link arrangement, there is no motivation for the person of ordinary skill to adapt the capsules of Ishikawa with an opening at an end thereof to receive a protrusion of a chain link as per the claimed invention. Hence claim 3 is patentable over Ishikawa.

By virtue of their dependency on Claim 3, Claims 4-17 and Claims 20-27, are also patentable for the reasons set out above.

Section 103(a) Rejections Overcome

Claims 2 and 4 have been rejected under 35 U.S.C 103(a) as being unpatentable over Braithwaite . Claims 2, 4 and 24-26 have been rejected under 35 U.S.C 103(a) as being unpatentable over Ishikawa Claims 11-17 have been rejected under 35 U.S.C 103(a) as being unpatentable over Braithwaite in view of U.S. Patent Number 1,410,556 to Dormont. Applicant respectfully traverses each and every aspect of this rejection. Applicant considers the claim rejections raised under 35 USC 103 to be addressed by the 35 USC 102 responses. Said objections concern claims that depend on newly amended claim 3, which is novel and inventive for the reasons set out above. This is not meant to be, nor to be taken as, agreement by the Applicant with the ground of rejection made against these dependent claims under 35 U.S.C. 103(a) based on Ishikawa, alone or in combination with Dormont. The Applicant reserves the right to fully argue the separate allowability of these dependent claims, but this is not considered necessary at this point in time in light of the allowability of the independent claim for the reasons already advanced.

Conclusion

Applicants respectfully submit that the instant application is in condition for allowance, which action is respectfully requested. The Examiner is invited to contact the undersigned at (919) 483-9995, to discuss this case, if desired.

Respectfully submitted,

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